

PUBLIC LAW BOARD NO. 7425

**PARTIES) SMART - TRANSPORTATION DIVISION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of Pacific Fifth Seniority District (Tacoma, WA) Conductor T. J. Codde for reinstatement to service with seniority rights unimpaired, removal of censure from his personal record and pay for all time lost including but not limited to the following: payment of vacation allowance, health and welfare costs, reimbursement of all expenses related to the pursuit of alternative employment, reimbursement for any damages incurred as the result of discharge from service including proceeds on any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on August 20, 2015. (Organization File No. D556-324-15A; Carrier File No. 50-15-0103D)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon. The Claimant was present for the Board's hearing on this case.

By joint letter dated June 19, 2015 both the Claimant and his Engineer (Michael Stucky), who were crew members responsible for operating train UEPPFTEO-92T on the Seattle subdivision June 13, 2015, were notified to report for a hearing in a charge that reads as follows: "Allegedly carelessness of the safety of yourself and others, misconduct, negligence affecting the interest of the BNSF, and failure to report this violation to a supervisor when maximum authorized speed was exceeded for your train at approximately 0708 hours PST on June 13, 2015 while within the municipal area from MP 0.0X to MP 40.1X limiting Key trains to 35 MPH."

The hearing, initially scheduled for June 26, 2015, was mutually postponed and then held on August 20, 2015. The record shows that Engineer Stucky had meantime been extended and entered into a waiver of hearing in acceptance of responsibility for the incident and assessed unstated discipline. Engineer Stucky appeared at the August 20, 2015 hearing as a witness for the Carrier.

Following the hearing the Claimant was dismissed from service by letter notice dated September 1, 2015 in a Carrier determination that testimony and exhibits brought forth during the hearing show that he was guilty as charged in violation of GCOR 1.6, Conduct, GCOR 1.4, Carrying Out Rules and Reporting Violations, GCOR 6.31, Maximum Authorized Speed, AGCORA 1.47, Duties of Crew Members, and, GCOR 1.13, Reporting and Complying with Instructions.

It is undisputed that the "Key" train (a train containing hazardous shipments) on which the Claimant was the Conductor on June 13, 2015 exceeded Northwest Division Timetable speed restriction of 35 mph for key trains traveling through the High Threat Urban Area (HTUA) from MP 0.0X to MP 40.1X on the Seattle Subdivision. The Claimant's train entered this speed restriction at 44 mph before slowing to 25 mph. Neither the Claimant nor Engineer Stucky self-reported this maximum speed restriction violation as required by applicable rules.

The incident came to the Carrier's attention when its remote audit desk in a check of engine tapes reported their findings of the maximum speed violation to Road Foreman of Engines Tysdal.

In study of the record the Board finds noteworthy that Engineer Stucky testified as follows when the hearing officer questioned him as to whether he was aware that there was a speed restriction on key trains through HTUA territory on the Seattle Subdivision: "Uh, yes. I, I knew 40 mile an hour trains like they had been before I went on vacation." The hearing officer then said to Engineer Stucky, "Can you say that again?" The response of Engineer Stucky was:

Uh, I, yeah, they were 40 mile an hour trains. I went on vacation. I now know that changed while I was on vacation. I was. I had the last two weeks of May off.

Engineer Stucky was thereafter asked by the hearing officer: "Do you recall if you had a current, up-to-date timetable whenever you were on duty on June 13th?" The response of Engineer Stucky was: "I do not recall."

In this respect the Board notes that Northwest Division Timetable No. 7, effective November 5, 2014, was updated June 19, 2015 as concerns the Seattle Subdivision, or six days prior to the incident the subject of the instant dispute.

As concerns Engineer Stucky having signed a waiver of hearing in an admission that he had gotten into a HTUA on a speed greater than denoted in the timetables, the hearing officer here asked Engineer Stucky: "When did you realize that you had done this?" The response of Engineer Stucky was:

Uh, I spoke with, uh, Road Foreman Tysdal and, uh, he questioned me about the train and about having, uh, slowed the train down and, uh, he said, he said in that conversation that I had been over by eight or nine miles an hour and I was a little bit flabbergasted. I told him it was over like two or three miles an hour. But I definitely had learned different during that conversation.

The Board will also note the following colloquy between the hearing officer and Engineer Stucky:

H.O. Prosser: Once you got into this area and you started reducing your speed do you recall any kind of in-cab communication you had with your Conductor at that time?

Engineer Stucky: I was pretty upset with myself, um, that I had, uh, I had got over 40, but , um, um, he did mention a – about um, reporting and I thought two or three miles an hour was not worth reporting it.

H.O. Prosser: Could you say that again for the record. I, I don't know if we could hear you over the train.

Engineer Stucky: Yeah. I, he, he asked about reporting and I wasn't sure that being two or three over especially when I had slowed the train down was worth reporting.

H.O. Prosser: And is this the reason you didn't report to Mr. Tysdal?

Engineer Stucky: Right, that's correct.

In further testimony Engineer Stucky said that the Claimant was doing a roll-by inspection and communicating with an opposing train and that he (Engineer Stucky) had already slowed the train down to 40 mph when he told the Claimant that he had been two or three mph over authorized speed; the Claimant had said the matter should be self-reported; and, he (Engineer Stucky) told the Claimant that he had never needed to do so in the past since he had as in the past slowed down.

The Claimant's representative then said to Engineer Stucky: "So you basically told him that you didn't feel you had to self-report." The response of Engineer Stucky was: "At that time I didn't. I know better now, yes."

Testimony of the Claimant reveals that he had been a Conductor in the past on key trains; he was aware that there are HTUA territory speed restrictions; he had observed the train to be traveling at 44 mph after he had been communicating with an opposing train involving his roll-by inspection when Engineer Stucky said that


he had exceeded maximum authorized speed; he saw Engineer Stucky bring the train's speed down to 25 mph; he had asked Engineer Stucky if he was going to self-report the violation; Engineer Stucky told him he did not need to do so; he accepted Engineer Stucky's response in a belief at the time that it was the responsibility of an Engineer to self-report speed violations; and, he acknowledged that he did not contact an on-duty Carrier officer after his trip to report the over speed violation.

The Board also finds worthy of consideration in this case Organization argument that the Carrier had identified the need for additional safety precautions as concerns key trains operating in HTUA territory prior to the incident the subject of this dispute and that it thereafter installed signage to remind and insure that crews operating key trains in HTUA territory comply with maximum authorized speed.

Turning to the matter of discipline, we recognize the seriousness of the incident. At the same time, the Board finds that it must consider as offered in argument that Engineer Stucky on the basis of his twenty (20) years of service, as compared to the Claimant's four years of service, may well have mistakenly misled the Claimant into a wrongful belief that there was no need for the Claimant himself to report the incident. Further, notwithstanding it being offered that the Claimant was of a belief that it was the responsibility of Engineer Stucky to have self-reported the incident, it is evident that as a result of the investigation the Claimant is now well aware that as a Conductor he has an equal responsibility to report speed and other violations whether due to his own or another crew member's actions.

In the light of the particular circumstances heretofore mentioned and in overall study of the record it will be the decision of the Board that discipline of dismissal from service be modified to a suspension from service in the amount of time served to the date the Claimant returns to service in implementation of the Board's Findings and Award. This return to service will be with all seniority and benefits unimpaired, without pay for time lost, imposition of a twelve (12) month probationary review period, and subject to the Claimant successfully passing usual and customary return to service examinations.


Award: Claim disposed of as set forth in the above Findings.



Melissa A. Beasley-Coke
Carrier Member



Robert E. Peterson
Chair & Neutral Member



J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: 9/25/17